

1-1 By: Nelson S.B. No. 1058
1-2 (In the Senate - Filed March 4, 2013; March 12, 2013, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 March 20, 2013, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; March 20, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Nelson	X		
1-9	Deuell	X		
1-10	Huffman	X		
1-11	Nichols	X		
1-12	Schwertner	X		
1-13	Taylor	X		
1-14	Uresti	X		
1-15	West	X		
1-16	Zaffirini	X		

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the regulation of the practice of nursing.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. Subsection (a), Section 301.004, Occupations
1-22 Code, is amended to read as follows:
1-23 (a) This chapter does not apply to:
1-24 (1) gratuitous nursing care of the sick that is
1-25 provided by a friend;
1-26 (2) nursing care provided during a disaster under the
1-27 state emergency management plan adopted under Section 418.042,
1-28 Government Code, if the person providing the care does not hold the
1-29 person out as a nurse unless the person is licensed in another
1-30 state;
1-31 (3) nursing care in which treatment is solely by
1-32 prayer or spiritual means;
1-33 (4) an act performed by a person under the delegated
1-34 authority of a person licensed by the Texas Medical Board;
1-35 (5) an act performed by a person licensed by another
1-36 state agency if the act is authorized by the statute under which the
1-37 person is licensed except that if the person also holds a license
1-38 under this chapter and the act is within the practice of nursing,
1-39 the board may take action against that license based on that act;
1-40 (6) the practice of nursing that is incidental to a
1-41 program of study by a student enrolled in a nursing education
1-42 program approved under Section 301.157(d) leading to an initial
1-43 license as a nurse; or
1-44 (7) the practice of nursing by a person licensed in
1-45 another state who is in this state on a nonroutine basis for a
1-46 period not to exceed 72 hours to:
1-47 (A) provide care to a patient being transported
1-48 into, out of, or through this state;
1-49 (B) provide nursing consulting services; or
1-50 (C) attend or present a continuing nursing
1-51 education program.
1-52 SECTION 2. Subsection (c), Section 301.2511, Occupations
1-53 Code, is amended to read as follows:
1-54 (c) The board by rule shall ~~may~~ develop a system for
1-55 ~~[initiating the process of]~~ obtaining criminal history record
1-56 information for a person accepted for enrollment in a nursing
1-57 ~~[applicants for a license under this chapter by requiring persons~~
1-58 ~~who enroll or plan to enroll in an]~~ educational program that
1-59 prepares the ~~[a]~~ person for initial licensure ~~[a license]~~ as a
1-60 registered or vocational nurse by requiring the person to submit to
1-61 the board a set of fingerprints that meets the requirements of
1-62 Subsection (a). The board may develop a similar system for an

2-1 applicant for enrollment in a nursing educational program. The
2-2 board may require payment of a fee by a person who is required to
2-3 submit a set of fingerprints under this subsection.

2-4 SECTION 3. Section 301.257, Occupations Code, is amended by
2-5 adding Subsections (j) and (k) to read as follows:

2-6 (j) The board may file a petition under this section based
2-7 on the results of a criminal history record information check
2-8 conducted under Section 301.2511. The board by rule shall adopt
2-9 requirements for the petition and determination under this
2-10 subsection. The rules must:

2-11 (1) identify the criminal offenses that constitute
2-12 grounds for the board to file the petition; and

2-13 (2) describe the documents required by the board to
2-14 make a determination of license eligibility.

2-15 (k) The board shall make a determination of license
2-16 eligibility under Subsection (j) not later than the 120th day after
2-17 the date the person submits the required documents to the board
2-18 under that subsection.

2-19 SECTION 4. Subsection (b), Section 301.452, Occupations
2-20 Code, is amended to read as follows:

2-21 (b) A person is subject to denial of a license or to
2-22 disciplinary action under this subchapter for:

2-23 (1) a violation of this chapter, a rule or regulation
2-24 not inconsistent with this chapter, or an order issued under this
2-25 chapter;

2-26 (2) fraud or deceit in procuring or attempting to
2-27 procure a license to practice professional nursing or vocational
2-28 nursing;

2-29 (3) a conviction for, or placement on deferred
2-30 adjudication community supervision or deferred disposition for, a
2-31 felony or for a misdemeanor involving moral turpitude;

2-32 (4) conduct that results in the revocation of
2-33 probation imposed because of conviction for a felony or for a
2-34 misdemeanor involving moral turpitude;

2-35 (5) use of a nursing license, diploma, or permit, or
2-36 the transcript of such a document, that has been fraudulently
2-37 purchased, issued, counterfeited, or materially altered;

2-38 (6) impersonating or acting as a proxy for another
2-39 person in the licensing examination required under Section 301.253
2-40 or 301.255;

2-41 (7) directly or indirectly aiding or abetting an
2-42 unlicensed person in connection with the unauthorized practice of
2-43 nursing;

2-44 (8) revocation, suspension, or denial of, or any other
2-45 action relating to, the person's license or privilege to practice
2-46 nursing in another jurisdiction or under federal law;

2-47 (9) intemperate use of alcohol or drugs that the board
2-48 determines endangers or could endanger a patient;

2-49 (10) unprofessional or dishonorable conduct that, in
2-50 the board's opinion, is likely to deceive, defraud, or injure a
2-51 patient or the public;

2-52 (11) adjudication of mental incompetency;

2-53 (12) lack of fitness to practice because of a mental or
2-54 physical health condition that could result in injury to a patient
2-55 or the public; or

2-56 (13) failure to care adequately for a patient or to
2-57 conform to the minimum standards of acceptable nursing practice in
2-58 a manner that, in the board's opinion, exposes a patient or other
2-59 person unnecessarily to risk of harm.

2-60 SECTION 5. Subsection (b), Section 301.453, Occupations
2-61 Code, is amended to read as follows:

2-62 (b) In addition to or instead of an action under Subsection
2-63 (a), the board, by order, may require the person to:

2-64 (1) submit to care, counseling, or treatment by a
2-65 health provider designated by the board as a condition for the
2-66 issuance or renewal of a license;

2-67 (2) participate in a program of education or
2-68 counseling prescribed by the board, including a program of remedial
2-69 education;

2-70 (3) practice for a specified period under the

3-1 direction of a registered nurse or vocational nurse designated by
3-2 the board; ~~or~~
3-3 (4) perform public service the board considers
3-4 appropriate; or

3-5 (5) abstain from the consumption of alcohol or the use
3-6 of drugs and submit to random periodic screening for alcohol or drug
3-7 use.

3-8 SECTION 6. Subsection (a), Section 301.454, Occupations
3-9 Code, is amended to read as follows:

3-10 (a) Except in the case of a temporary suspension authorized
3-11 under Section 301.455 or 301.4551 or an action taken in accordance
3-12 with an agreement between the board and a license holder, the board
3-13 may not take any ~~[initiate a]~~ disciplinary action relating to a
3-14 license unless:

3-15 (1) the board has served notice to the license holder
3-16 of the facts or conduct alleged to warrant the intended action; and

3-17 (2) the license holder has been given an opportunity,
3-18 in writing or through an informal meeting, to show compliance with
3-19 all requirements of law for the retention of the license.

3-20 SECTION 7. Subsection (a), Section 301.458, Occupations
3-21 Code, is amended to read as follows:

3-22 (a) Unless there is an agreed disposition of the complaint
3-23 under Section 301.463, ~~[and]~~ if probable cause is found under
3-24 Section 301.457(e)(2), the board or the board's authorized
3-25 representative shall file ~~[initiate proceedings by filing]~~ formal
3-26 charges against the nurse.

3-27 SECTION 8. Subsection (a), Section 301.465, Occupations
3-28 Code, is amended to read as follows:

3-29 (a) Notwithstanding Section 2001.089, Government Code, the
3-30 ~~[The]~~ board may request issuance of a subpoena to be served by [in
3-31 ~~any manner authorized by law, including]~~ personal service by a
3-32 board investigator or ~~[and service]~~ by certified mail.

3-33 SECTION 9. Section 301.466, Occupations Code, is amended
3-34 by amending Subsection (a) and adding Subsection (d) to read as
3-35 follows:

3-36 (a) A complaint and investigation concerning a nurse under
3-37 this subchapter, ~~[and]~~ all information and material compiled by the
3-38 board in connection with the complaint and investigation, and the
3-39 information described by Subsection (d) are:

3-40 (1) confidential and not subject to disclosure under
3-41 Chapter 552, Government Code; and

3-42 (2) not subject to disclosure, discovery, subpoena, or
3-43 other means of legal compulsion for release to anyone other than the
3-44 board or a board employee or agent involved in license holder
3-45 discipline.

3-46 (d) Notwithstanding Subsection (c), if the board orders a
3-47 nurse to participate in a peer assistance program approved by the
3-48 board under Section 467.003, Health and Safety Code, the complaint,
3-49 filing of formal charges, nature of those charges, final board
3-50 order, and disciplinary proceedings are subject to disclosure:

3-51 (1) only to the same extent as information regarding a
3-52 complaint is subject to disclosure under Subsection (b); or

3-53 (2) in a subsequent matter relating to the board order
3-54 or a subsequent violation of this chapter or a board rule.

3-55 SECTION 10. The heading to Subchapter N, Chapter 301,
3-56 Occupations Code, is amended to read as follows:

3-57 SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION

3-58 SECTION 11. Section 301.651, Occupations Code, is amended
3-59 to read as follows:

3-60 Sec. 301.651. DEFINITIONS ~~[DEFINITION]~~. In this
3-61 subchapter:

3-62 (1) "Corrective ~~[, "corrective]~~ action" means a fine or
3-63 remedial education imposed under Section 301.652.

3-64 (2) "Deferred action" means an action against a person
3-65 licensed or regulated under this chapter that is deferred by the
3-66 board as provided by this subchapter.

3-67 SECTION 12. Subsection (b), Section 301.655, Occupations
3-68 Code, is amended to read as follows:

3-69 (b) If the person does not accept the executive director's
3-70 determination and recommended corrective action as originally

4-1 proposed or as modified by the board or fails to respond in a timely
4-2 manner to the executive director's notice as provided by Section
4-3 301.654, the executive director shall:

4-4 (1) terminate corrective action proceedings [~~under~~
4-5 ~~this subchapter~~]; and

4-6 (2) dispose of the matter as a complaint under
4-7 Subchapter J.

4-8 SECTION 13. Subchapter N, Chapter 301, Occupations Code, is
4-9 amended by adding Section 301.6555 to read as follows:

4-10 Sec. 301.6555. DEFERRED ACTION. (a) For any action or
4-11 complaint for which the board proposes to impose on a person a
4-12 sanction other than a reprimand or a denial, suspension, or
4-13 revocation of a license, the board may:

4-14 (1) defer the final action the board has proposed if
4-15 the person conforms to conditions imposed by the board, including
4-16 any condition the board could impose as a condition of probation
4-17 under Section 301.468; and

4-18 (2) if the person successfully meets the imposed
4-19 conditions, dismiss the complaint.

4-20 (b) Except as provided by this subsection, a deferred action
4-21 by the board is not confidential and is subject to disclosure in
4-22 accordance with Chapter 552, Government Code. If the person
4-23 successfully meets the conditions imposed by the board in deferring
4-24 final action and the board dismisses the action or complaint, the
4-25 deferred action of the board is confidential to the same extent as a
4-26 complaint is confidential under Section 301.466.

4-27 SECTION 14. Section 301.656, Occupations Code, is amended
4-28 to read as follows:

4-29 Sec. 301.656. REPORT TO BOARD. The executive director
4-30 shall report periodically to the board on the corrective or
4-31 deferred actions imposed under this subchapter, including:

4-32 (1) the number of [~~corrective~~] actions imposed; and

4-33 (2) the types of violations for which [~~corrective~~]
4-34 actions were imposed[~~, and~~

4-35 [~~(3) whether affected nurses accepted the corrective~~
4-36 ~~actions]~~.

4-37 SECTION 15. Section 301.657, Occupations Code, is amended
4-38 to read as follows:

4-39 Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR
4-40 DEFERRED ACTION. (a) Except to the extent provided by this
4-41 section, a person's acceptance of a corrective or deferred action
4-42 under this subchapter does not constitute an admission of a
4-43 violation but does constitute a plea of nolo contendere.

4-44 (b) The board may treat a person's acceptance of corrective
4-45 or deferred action as an admission of a violation if the board
4-46 imposes a sanction on the person for a subsequent violation of this
4-47 chapter or a rule or order adopted under this chapter.

4-48 (c) The board may consider a corrective or deferred action
4-49 taken against a person to be a prior disciplinary action under this
4-50 chapter when imposing a sanction on the person for a subsequent
4-51 violation of this chapter or a rule or order adopted under this
4-52 chapter.

4-53 SECTION 16. Section 301.1607, Occupations Code, is
4-54 repealed.

4-55 SECTION 17. (a) Except as provided by Subsection (b) of
4-56 this section, the changes in law made by this Act to Chapter 301,
4-57 Occupations Code, apply only to a violation that occurs on or after
4-58 the effective date of this Act. A violation that occurs before that
4-59 date is governed by the law in effect on the date the violation
4-60 occurred, and the former law is continued in effect for that
4-61 purpose.

4-62 (b) The changes in law made by this Act to Subchapter N,
4-63 Chapter 301, Occupations Code, shall apply to a violation that
4-64 occurs before the effective date of this Act if the complaint
4-65 relating to that violation remains pending on that date.

4-66 SECTION 18. This Act takes effect September 1, 2013.

4-67 * * * * *